

but exports may be possible under a license or an Encryption Licensing Arrangement on a case-by-case basis. This policy of approval excludes those foreign commercial firms or their separate business units (as defined in part 772 of the EAR) engaged in the manufacturing and distribution of items or services controlled by the U.S. Munitions List.

(ii) Note that any country or end-user prohibited in the past from receiving encryption commodities and software under a specific Encryption Licensing Arrangement will be reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(iii) Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use an existing Encryption Licensing Arrangement for exports and reexports of these products only when Encryption Licensing Arrangement has been granted to the manufacturer and the export and reexport meets the terms and conditions of this paragraph (b)(7).

(iv) You must submit to BXA the name and address of the end-user.

(8) *All other encryption items.* (i) *Encryption licensing arrangement.* Applicants may submit license applications for exports and reexports of certain encryption commodities and software in unlimited quantities for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. Applications will be reviewed on a case-by-case basis. If approved, encryption licensing arrangements may be valid for extended periods as requested by the applicant in block #24 on Form BXA-748P. In addition, the applicant must specify the sales territory and class(es) of end-user(s). Such licenses may require the license holder to report to BXA certain information such as ECCN, item description, quantity, and end-user name and address.

(ii) *Applications for encryption items not authorized under an encryption licensing arrangement.* Applications for the export and reexport of all other encryption items will be considered on a case-by-case basis.

(iii) Exports and reexports of encryption commodities and software of any key length to “strategic partners” of U.S. companies will receive favorable consideration when the end-use is for the protection of U.S. company proprietary information.

(9) *Applications for encryption technology.* Applications for the export and reexport of encryption technology will be considered on a case-by-case basis.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) [Reserved]

[61 FR 68580, Dec. 30, 1996, as amended at 63 FR 50522, Sept. 22, 1998; 63 FR 72162, Dec. 31, 1998]

#### § 742.16 India and Pakistan Sanctions.

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102 (b)(2) of that Act. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, the following sanctions measures are imposed against India and Pakistan.

(a) *License requirement.* A license is required for all exports and reexports of items controlled for nuclear non-proliferation (NP) reasons to all end-users in India and Pakistan. In addition, a license is required for all exports and reexports of items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items listed in § 740.2(a)(5) of the EAR, which remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(b) *Licensing policy.*

(1) *Nuclear Nonproliferation.* There is a policy of denial for all applications to export and reexport items controlled for nuclear proliferation (NP) reasons to all end-users in India and Pakistan,

except high performance computers (see § 742.12(b)(3)(iii) of this part for licensing policy regarding high performance computers).

(2) *Missile Technology*. There is a policy of denial for all applications to export and reexport items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis.

[63 FR 64324, Nov. 19, 1998]

**SUPPLEMENT NO. 1 TO PART 742—NON-PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS**

NOTE: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application.

(1) The contract sanctity date for exports to Iran or Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(2) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylamino-ethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(3) The contract sanctity date for exports to Iran or Syria of items in ECCNs 1C351, 1C352, 1C353 and 1C354 is February 22, 1989.

(4) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl difluoride, phosphorous oxychloride, and thiodiglycol is February 22, 1989.

(5) The contract sanctity date for exports to Iran, Libya or Syria of potassium hydro-

gen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine is December 12, 1989.

(6) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (2) of this supplement applies.

(7) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Iran or Syria, paragraph (1) of this supplement applies. For exports of triethanolamine to Iran, Libya or Syria, paragraph (5) of this supplement applies.

(8) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of chemicals controlled by ECCN 1C350 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride triethanolamine, and trimethyl phosphite. (See also paragraphs (6) and (7) of this supplement.) For exports to Iran, Libya or Syria, see paragraphs (1) through (6) of this supplement.

(9) The contract sanctity date for exports and reexports of the following commodities and technical data is March 7, 1991:

(i) Equipment (for producing chemical weapon precursors and chemical warfare agents) described in ECCNs 2B350 and 2B351;

(ii) Equipment and materials (for producing biological agents) described in ECCNs 1C351, 1C352, 1C353, 1C354, and 2B352; and

(iii) Technology (for the development, production, and use of equipment described in ECCNs 1C351, 1C352, 1C353, 1C354, 2B350, 2B351, and 2B352) described in ECCNs 2E001, 2E002, and 2E301.

(10) The contract sanctity date for license applications subject to § 742.2(b)(3) of this part is March 7, 1991.

(11) The contract sanctity date for reexports of chemicals controlled under ECCN 1C350 is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya or Syria is December 12, 1989.

(12) The contract sanctity date for reexports of human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens controlled by ECCNs 1C351, 1C352, 1C353 and 1C354 is March 7, 1991.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]